

Chapter 10.28

SEX OFFENSES

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10.28.030 Procuring services of others prohibited.

It is unlawful for any person under a disability by reason of age to engage or utilize the services of any other person, whether for remuneration or not, to procure for such person under such disability any article or material that the said person is forbidden by law to purchase or have in his possession or control. Any person who commits any such act shall be guilty of a misdemeanor.

**10.28.050 Sex paraphernalia—
Distribution, display or promotion to minors prohibited.**

A. Definitions

1. “Display publicly” means the exposing, placing, posting, exhibiting, whether public or private, an item in a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, place or vehicle.

2. “Distribute” means to transfer the possession of, with or without consideration.

3. “Knowingly” means to have actual or

constructive knowledge of the contents of the subject matter. A person has constructive knowledge if a reasonable inspection under the circumstances would have disclosed the nature of the subject matter or if the failure to inspect is for the purpose of avoiding such disclosure.

4. “Minor” means any unmarried person less than 18 years of age.

5. “Person” shall not be limited to individuals only, but means and includes public and private corporations, firms, joint associations, partnerships and the like. The word “person” as used herein shall apply to a natural person and shall apply equally to the male and female genders.

6. “Promote” means to manufacture, issue, transmit, publish, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

7. “Sexual device” means any item, device or product, including but not limited to a dildo, vibrator, artificial vagina, spanish fly, ben wa balls, pillow or other product shaped or made to resemble male or female genitals, buttocks, or developed female breasts, edible underwear, flavored or unflavored edible body lotion or other substance designed for internal consumption, sadomasochistic device, or any other item, device or product manufactured, promoted or designed to be used primarily for sexual stimulation, sexual arousal, or the enhancing or prolonging of sexual activity. “Sexual device” shall not mean “sex paraphernalia” as defined in this section, and shall not mean any device, appliance or pill designed to be used primarily for contraception purposes, and shall not mean movies, books, magazines or other communicative material protected by the First Amendment of the United States Constitution.

8. “Sex paraphernalia” means any inedible lubricant which is manufactured, promoted or designed to be used primarily for sexual stimulation, sexual arousal, or the enhancing or prolonging of sexual activity.

9. "Willfully" means a purpose or willingness to commit the act or to omit an act required herein.

B. It is unlawful for any person to knowingly and willfully distribute or furnish any sex paraphernalia to any minor. Each distribution to a minor shall constitute a separate offense, and any such offense shall be a misdemeanor.

C. It is unlawful for any person to knowingly and willfully promote, display publicly, distribute or furnish any sexual device to any minor. Each promotion or distribution or each day during which any sexual device is displayed publicly to a minor shall constitute a separate offense, and any such offense shall be a misdemeanor.

D. This section does not prohibit any parent or legal guardian from distributing, promoting or displaying sex paraphernalia or sexual device to his minor child or ward.

10.28.060 Showing of material harmful to minors at outdoor theaters.

A. It is unlawful for any person to willfully or knowingly show at or in an outdoor theater any motion picture that is harmful to minors if such motion picture, or any part or portion thereof, can be seen or viewed by a minor from a place or position outside the theater premises, or viewing area associated therewith, whether or not such premises or viewing area is enclosed by fence or wall.

B. Definitions. Whenever used in this section, the following words and phrases shall be defined as follows:

1. "Minor," "harmful to minors," "nudity," "sexual conduct," "sexual excitement" and "sodomasochistic abuse" shall have the same meanings as those set forth for such words and phrases in section 10.28.090 of this chapter.

2. "Motion picture" means and includes movie, slide or still projection, photograph, or negative thereof, videotape, drawing, sketch, engraving, print, painting, picture, image, re-

cording, reproduction, physical object, or any visual representation of any kind or nature however made or displayed, including the voice or sound associated therewith.

3. "Outdoor theater" means and includes drive-in, amphitheater, arena, stadium, field, park, or any place or area where an audience may assemble that is not completely enclosed by floor, walls and ceiling or roof, with building or construction materials.

4. "Person" shall not be limited to individuals only, but means and includes public and private corporations, firms, joint associations, partnerships, and educational, scientific and religious institutions, organizations and associations. The word "person" shall also apply to the plural as well as the singular and when being applied to a natural person shall include both male and female.

5. "Show" means and includes the words exhibit, publish, advertise, depict, portray, represent, describe, recite, or any other manner or method of visual or aural representation.

6. "Willfully" and "knowingly" shall have the same meanings as those set forth in section 10.28.050 of this chapter.

C. Any person committing any such act shall be guilty of a misdemeanor for each day of violation hereof.

10.28.070 Possession of harmful materials by minors.

It is unlawful for any person under the age of 18 years to knowingly have in his possession or control any article or material of whatever nature that is determined to be obscene, or that is harmful to minors as defined in this title. Any person committing any such act shall be guilty of a misdemeanor for each day of violation hereof.

10.28.080 Procuring certain articles for minors prohibited.

It is unlawful for any person to procure for any other person under disability by reason of

age any article or material that such person under such disability is forbidden by law to purchase or have in his possession or control. Any person committing any such act shall be guilty of a misdemeanor for each day of violation hereof.

10.28.090 Exposing minors to harmful materials.

A. Definitions. As used in this section:

1. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:

a. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors;

b. Predominantly appeals to the prurient interest of minors; and

c. Is without serious literary, artistic, political or scientific value.

2. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief that warrants further inspection or inquiry, or both, as to:

a. The character and content of any material described herein that is reasonably susceptible of examination by the defendant; and

b. The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable, *bona fide* attempt to ascertain the true age of such minor.

3. "Minor" means any person under the age of 18 years.

4. "Nudity" or "state of nudity" means the live showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola.

5. "Sadomasochistic abuse" means flagellation or torture by or upon a person for the

purpose of erotic pleasure.

6. "Sexual conduct" or "Specified Sexual Activity" means actual or simulated acts of any of the following:

a. Sex acts, normal or perverted, including, but not limited to, human sexual intercourse, sexual copulation between a person or an animal, cunnilingus, bestiality, buggery, pederasty, sodomy, oral copulation, or masturbation; or

b. Excretory functions as a part of or in connection with any of the activities described above.

B. It is unlawful for any person, and such person shall be guilty of a misdemeanor for each day of violation hereof, to knowingly sell, loan or give to a minor:

1. Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, or sadomasochistic abuse, and that is harmful to minors; or

2. Any book, pamphlet, magazine, printed matter (however reproduced), or sound recording that contains any matter enumerated in subsection (B)(1) of this section, or narrative accounts of sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

C. It is unlawful for any person, and such person shall be guilty of a misdemeanor for each day of violation hereof, to knowingly exhibit to a minor, or knowingly sell to a minor an admission ticket or pass, or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show or other presentation that, in whole or in part, depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse, and that is harmful to minors.

D. Any motion picture rated NC-17 by the Motion Picture Association, or any motion picture carrying an "X" rating shall be deemed to be harmful to minors under this section.

E. A violation of any provision of this

section shall constitute a misdemeanor.

10.28.100 Obscene acts and materials.

A. Is it unlawful for any person, and such person shall be guilty of a misdemeanor for each day of violation hereof, to willfully or knowingly act in, pose for, model for, print, draw, design or otherwise prepare, sell, offer for sale, give away, exhibit, publish or offer to publish, or have in his possession or under his control with the intent to sell, offer for sale or otherwise distribute any obscene book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, image, cast, slide, figure, instrument, statue, drawing or presentation, or other article of material that is obscene.

B. Definitions. As used in this section:

1. "Knowingly" means to have actual or constructive knowledge of the contents of the subject matter. A person has constructive knowledge if a reasonable inspection under the circumstances would have disclosed the nature of the subject matter, and if the failure to inspect is for the purpose of avoiding such disclosure.

2. "Obscene" means, to the average adult person applying contemporary community standards, the dominant theme of the material or conduct, taken as a whole, appeals to the prurient interest and is without serious literary, artistic, political or scientific value. A "prurient interest" is a lewd, shameful or morbid interest in nudity, sex, or excretion.

3. "Willfully" means a purpose or willingness to commit the act or to omit an act as required herein.